UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TENNESSEE EASTERN DIVISION

KIMBERLY HOLLIDAY,)
Plaintiff,))
VS.) No. 19-1184-JDT-jay
PHYLLIS CAMPBELL, ET AL.,))
Defendants.)

ORDER ADOPTING REPORT AND RECOMMENDATION TO DISMISS CASE, CERTIFYING AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

Plaintiff Kimberly Holliday, a resident of Jackson, Tennessee, filed a *pro se* civil complaint and a motion to proceed *in forma pauperis* on August 29, 2019. (ECF Nos. 1 & 2.) United States Magistrate Judge Jon A. York granted Holliday leave to proceed *in forma pauperis*. (ECF No. 11.) On December 3, 2019, Magistrate Judge York issued a Report and Recommendation (R&R) in which he recommended the complaint be dismissed *sua sponte* for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). (ECF No. 12.)¹ Objections to the R&R were due on or before December 20, 2019. *See* Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(a), (d). However, Holliday has filed no objections.

Holliday has sued Phyllis Campbell, Patti Vinson, Lisa Vaughn and Walter Butler, administrators at Bethel University in McKenzie, Tennessee; she also sues Patricia Drown, a

¹ The Magistrate Judge also denied Holliday's motion to appoint counsel. (ECF Nos. 7, 13.)

facilitator at Bethel. Holliday alleges that she criticized Drown for unprofessionalism in an email

and told Drown she would report her to Academic Affairs, after which Drown falsely accused

Holliday of plagiarism. The administrator Defendants conducted an investigation, and Holliday

eventually was expelled from Bethel. Holliday claims she was treated vindictively and unfairly

and alleges she was expelled in retaliation for her reporting Drown to Academic Affairs. She also

alleges she was not given sufficient due process prior to the expulsion from Bethel. Holliday

asserts that several other schools to which she has since applied have denied her admission because

of the expulsion.

In the R&R, Magistrate Judge York determined the complaint is subject to dismissal in its

entirety. He found that Holliday's complaint fails to state a claim under 42 U.S.C. § 1983 because

she has failed to assert that the Defendants, private individuals employed by a private university,

were acting under color of state law. The Court finds no error in that conclusion. Accordingly,

the R&R is ADOPTED, and this case is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)

for failure to state a claim on which relief may be granted.

It is CERTIFIED, pursuant to Federal Rule of Appellate Procedure 24(a), that any appeal

in this matter by Holliday would not be taken in good faith. Leave to appeal in forma pauperis is,

therefore, DENIED. If Holliday files a notice of appeal, she must pay the full \$505 appellate filing

fee to the District Court Clerk or file a motion for leave to appeal in forma pauperis and supporting

affidavit in the Sixth Circuit Court of Appeals.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/ James D. Todd

JAMES D. TODD

UNITED STATES DISTRICT JUDGE

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